



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

HONORABLE COMMISSIONER FOR PATENTS
ALEXANDRIA, VA 22313

Re: Patent Application of: Erfani *et al.*
Application Serial No.: 09/895,948
Filed: June 29, 2001
Examiner: Nathan M. Curs
Group Art Unit: 2613
Title: Advanced Signaling System For Switching And Control In Integrated
Optical Networks

Sir:

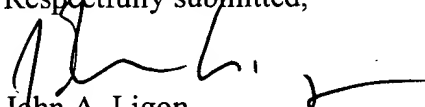
Enclosed for filing in the United States Patent and Trademark Office are the following:

1. Reply Brief (to 2nd Examiner Answer)
2. Transmittal Sheet
3. Postcard Receipt

CONDITIONAL PETITION

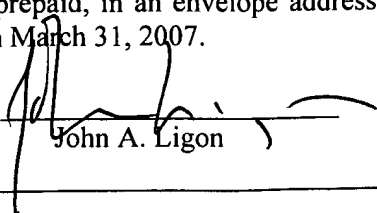
If any extension of time is required for the submission of the above-identified items, Applicant requests that this be considered a petition therefor. Please charge any additional charges relating to this matter to Deposit Account No. 50-1944. A duplicate copy of this letter is enclosed.

Respectfully submitted,


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Dated: March 31, 2007

I hereby certify that this correspondence, including the referenced enclosures, is being deposited with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313 on March 31, 2007.

By: 
John A. Ligon



THE UNITED STATES PATENT AND TRADEMARK OFFICE

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TO: **BOARD OF PATENT APPEALS AND INTERFERENCES
ALEXANDRIA, VA 22313**

REPLY BRIEF OF APPELLANT

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REPLY BRIEF OF APPELLANT

A second Examiner's Answer in the captioned appeal has been received having a mailing date of February 1, 2007. Upon review of the second Examiner's Answer, it appears to be substantively identical to the original Examiner's Answer filed herein, having a mailing date of November 3, 2006. The Appellant responded to the original Examiner's Answer with its Reply Brief filed January 3, 2007. After consultation with the Examiner, the Appellant has determined to respond to the second Examiner's Answer with a resubmission of its January 3, 2007 Reply Brief, which follows hereafter.

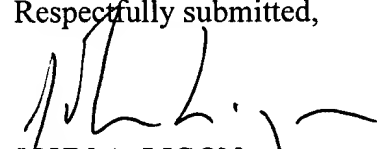
Beyond the substantial reiteration of the rejection bases from the Final Office Action, which have already been addressed by the Appellant in its main brief, the essential thrust of the Examiner's position in his Answer is that Appellant's argument "does not exactly reflect the claim limitations of [independent] claims 1 or 16." (Answer, p. 15, lines 7-16 & p. 17, lines 4-8). Appellant respectfully suggests that a fair construction of this position of the Examiner is an acknowledgement by the Examiner that the Applicants have disclosed features of their

invention that distinguish over the cited art, but have failed to clearly describe such features in claim limitations. While the Appellant believes that the Examiner's particular characterization of the failure of the claim limitations to clearly define the distinctiveness over the art does not reflect a fair reading of the claims as a whole (and thus that the claims should be found to reflect the distinguishing features as they stand), the key point is that this position on the part of the Examiner is presented for the first time in an appeal response. The record in this proceeding will show that the Applicants amended their claims numerous times in order to address the Examiner's rejections with the intent of further clarifying the distinctiveness of the claimed invention over the cited art. Had the Examiner provided this indication in the Final Office Action that the basis for the rejection was largely a matter of further clarifying the distinguishing features in the claim limitation, the Applicants would certainly have endeavored to explore the clarifying amendments that the Examiner appears to believe are warranted.

Appellant also wishes to briefly respond to one other point in the Examiner's "Response to Argument." As was the case in the Final Office Action, the Examiner again relies on paragraphs 0099-0102 of the cited Moy reference as teaching the feature of Applicants' invention whereby the signaling in their optical network is independent of legacy signaling methodologies employed in connected external networks. While the Examiner now refers to that material in terms of Moy's "trail creation signal" (the referenced "optical trail" having been defined by Moy at paragraph 0056 as "a logical connection between two [Interfaced User Devices]"), Appellant respectfully submits that no reasonable construction of the cited material in Moy supports the Examiner's position of a teaching of independence in the optical network from legacy signaling methodologies applied at network connection points.

In the final analysis, it appears that a proper construction of the position of the Examiner in the Examiner's Answer is that, while the invention here is distinguishable over the teaching of Moy, the present claim limitations do not clearly establish that distinctiveness. As set forth above, Appellant respectfully submits that such a position was not articulated in the Office Actions preceding this appeal. Thus, while Appellant believes that it has shown herein and in the main brief that the claims on appeal are patentable over the cited art, and urges the Board to so find, it alternatively requests that the Board remand the case to the Examiner with guidance and instruction for further prosecution.

Respectfully submitted,

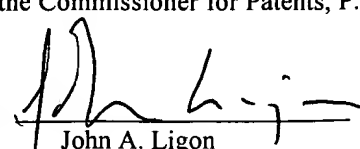


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By:



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